

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

STATE OF GEORGIA <i>ex rel.</i>)	
HUNTER LABORATORIES, LLC)	
and CHRIS RIEDEL, an individual,)	CIVIL ACTION NO. _____
)	
Plaintiff,)	
)	
v.)	
)	
QUEST DIAGNOSTICS)	
INCORPORATED, QUEST)	
DIAGNOSTICS NICHOLS)	
INSTITUTE f/k/a QUEST)	
DIAGNOSTICS, INC., QUEST)	
DIAGNOSTICS CLINICAL)	
LABORATORIES, INC.,)	
LABORATORY CORPORATION)	
OF AMERICA, LABORATORY)	
CORPORATION OF AMERICA)	
HOLDINGS, and SPECIALTY)	
LABORATORIES, INC., et al.,)	
)	
Defendants.)	

DEFENDANTS' JOINT NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1367, 1441, 1446 and other applicable law, Defendants Quest Diagnostics Incorporated, Quest Diagnostics Nichols Institute, Quest Diagnostics Clinical Laboratories, Inc., and Specialty Laboratories, Inc. (together, “Quest”), along with Defendants Laboratory Corporation of America and Laboratory Corporation of America Holdings (together, “LabCorp”), hereby

file this Joint Notice of Removal of the above-captioned case. Defendants respectfully assert the following facts to support removal, and in so doing, expressly reserve all other issues for further pleadings:

PROCEDURAL HISTORY

1. LabCorp and Quest are the named defendants in *State of Georgia ex rel. Hunter Laboratories, LLC and Chris Riedel v. Quest Diagnostics Incorporated, et al.*, Case No. 2008-EV-003846, filed in the State Court of Fulton County, Georgia (the “State Court Action”).

2. Chris Riedel and Hunter Laboratories, LLC (“Relators”) filed, under seal, a *qui tam* Complaint in the State Court Action on January 8, 2008 on behalf of the State of Georgia, pursuant to the required sealing provisions under O.C.G.A. § 49-4-168.2(c)(2). That Complaint sought relief including treble damages, civil penalties, and costs and attorneys’ fees for Defendants’ alleged violation of the Georgia False Medicaid Claims Act, O.C.G.A. 49-4-168 *et seq.* (“GFMCA”).

3. On August 13, 2012, the State of Georgia filed its Notice of Election to Decline to Intervene in the State Court Action, indicating the State’s decision not to proceed in litigating the claims outlined in the Complaint. At that time, Relators were permitted to proceed independently on behalf of the State under the *qui tam* provisions of the GFMCA.

4. Defendant Quest Diagnostics Incorporated was served with a Summons and the Complaint on May 2, 2013. Defendant Quest Diagnostics Nichols Institute, was served with a Summons and the Complaint on May 8, 2013. Defendant Quest Diagnostics Clinical Laboratories, Inc., was served with a Summons and the Complaint on May 2, 2013. Defendant Specialty Laboratories, Inc. was served with a Summons and the Complaint on May 8, 2013.

5. Defendant Laboratory Corporation of America was served with a Summons and the Complaint on May 2, 2013. Defendant Laboratory Corporation of America Holdings was served with a Summons and the Complaint on May 2, 2013.

INTRODUCTION

6. Relators' Complaint asserts two different theories by which Defendants' laboratory service billing practices have allegedly violated the GFMCA.

7. First, in their "overcharge theory," Relators allege that the Defendant laboratories have knowingly made false claims for payment to the Georgia Medicaid program by submitting claims for payment that reflect prices higher than the maximum reimbursement rates allowed under Georgia Medicaid rules, which Relators assert establish a "lowest price" requirement. (Compl. ¶¶ 6-8, 30-38.)

8. Second, Relators allege a distinctly federal “pull through” theory of liability that hinges entirely on the interpretation and application of federal law. Relators allege that Defendants “provided kickbacks in the form of deeply discounted private rates to draw in large volumes of ‘pull through’ Medicaid and other referrals.” (Compl. ¶ 29.) Relators contend that these discounting practices constitute “independently unlawful” violations of the federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b (“AKS”), which rendered subsequent claims for payment submitted to Georgia “false,” and thus actionable under the GFMCA.

9. The Complaint repeatedly refers to the “pull through” theory, signifying the Relators’ intent to rely substantially on alleged violations of the federal AKS as a basis for liability.¹ Notably, the Complaint uses the term “pull through” a total of *five* times. (Compl. ¶¶ 25, 29, 40.) And, in several additional instances throughout the Complaint, while avoiding the specific term “pull through,” Relators refer to this theory:

- as “deeply discounting . . . private fees to draw in lucrative Medicaid and other referrals” (Compl. ¶ 2);
- as an attempt “to attract new business from customers who have been receiving deep discounts” (Compl. ¶ 3);

¹ Defendants do not concede that the Complaint states a cause of action under this or any other theory, and reserve all rights to challenge the sufficiency of all or any portion of the Complaint.

- as a “common industry practice” of using deep discounts “to induce their customers to use a single commercial reference laboratory,” upon which Defendants “rel[y] . . . to operate at a profit” (Compl. ¶ 25);
- as a billing practice by which Defendants “depended, and continue to depend, on referrals . . . of large volumes of Medicaid and other testing business to cover the losses they would otherwise sustain in offering deeply discounted testing services.” (Compl. ¶ 26); and
- as a tactic that Defendant Quest “instructed its sales personnel [to use]” in order to “capture . . . higher paying Medicaid and other referrals.” (Compl. ¶ 40)

REMOVABILITY AND JURISDICTION

10. This action is properly removable to this Court pursuant to 28 U.S.C. §§ 1441, 1331 and 1367, under which the District Courts of the United States have either removal and original jurisdiction over causes of action that arise under the laws of the United States, or have supplemental jurisdiction over any state law cause of action that forms part of the same case or controversy as those claims that present a federal question.

11. Based on the factual allegations of the Complaint relating to “pull through,” which are construed as true for purposes of assessing removal jurisdiction, Relators have alleged at least one cause of action that “arises under” federal law. Relators’ “pull through” theory “necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may entertain

without disturbing any congressionally approved balance of federal and state judicial responsibilities.” *Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 314 (2005); *Adventure Outdoors, Inc. v. Bloomberg*, 552 F.3d 1290, 1296 (11th Cir. 2008).

12. Removal is appropriate here under the first prong of the *Grable* test because the “pull through” allegations present questions of disputed federal law under the federal AKS that the Court must necessarily resolve to determine whether certain claims are actionable.² Namely, Relators must show that the Defendants violated the federal AKS through the “pull through” theory in order to prove all required elements of the corresponding GFMCA claims. Defendants contest these “pull through” allegations, and contest that these allegations constitute a violation of the AKS.

13. Removal in this case also satisfies the second prong of the *Grable* test because the “pull through” allegations present substantial questions of federal law. Although Relators’ claims are nominally based on the GFMCA, resolving any

² There can be no question that Relators’ “pull through” theory is based on federal, and not state, law. Relators themselves cite to and rely on the federal AKS statute in the text of the Complaint. (Compl. ¶ 29.) In addition, Relators characterize these billing practices as “strictly prohibited by **Federal** health care programs.” (*Id.*) (emphasis provided).

cause of action based on the “pull through” theory will require more than the Court merely applying federal AKS standards to the facts of this case. Resolution also will require the Court to consider and determine nearly pure questions of federal law, including the interpretation of the bounds of statutory provisions, definitions, and statutory and regulatory exceptions under the AKS.³

14. Removal is particularly appropriate in this case due to the strong federal interest in assuring that the AKS is interpreted consistently by federal authorities. Resolution of the “pull through” causes of action, and the related determinations of whether AKS liability exists for those alleged practices, will necessarily implicate the interpretation and discretionary application of nationally-applicable federal health care regulations and corresponding policy determinations. These decisions have been reserved for federal regulatory and enforcement authorities such as the U.S. Department of Justice (“DOJ”) and the Department of

³As one example, certain statutory exceptions and regulatory safe harbors exist to guide health care providers in obtaining immunity from federal criminal and civil AKS prosecution when they are designing and implementing commercial arrangements. It is the *federal* agency, the Department of Health and Human Services, Office of the Inspector General, that has been charged with promulgating and interpreting these exceptions, which signals the significant federal interest in maintaining consistency in their interpretation.

Health and Human Services, Office of the Inspector General (“OIG”).⁴ Because the outcome of this case may effectively criminalize what Relators claim are “common industry practices,” these determinations may have conclusive and binding unforeseen effects upon other actors within the health care industry, and could hinder the ability of federal authorities to institute comprehensive policy choices consistent with the goals established by the federal government.

**COMPLIANCE WITH PROCEDURAL AND VENUE REQUIREMENTS
OF THE REMOVAL STATUTE**

15. Removal of the State Court Action is timely pursuant to 28 U.S.C. § 1446(b)(1), as this Notice is being filed with this Court within thirty (30) days after the last Defendant was served with a copy of Relators’ initial pleading setting forth the claims for relief upon which the action is based.

16. In accordance with 28 U.S.C. § 1446(a), a true and correct copy of the Complaint that has been served on each Defendant in the State Court Action is

⁴ See Statement of Organization, Functions, and Delegations of Authority, 69 Fed. Reg. 127, 40,386 (July 2, 2004) (OIG established as “an independent and objective oversight unit” empowered to “lead[] and coordinate[] activities to prevent and detect fraud and abuse”); *Id.* at 40,388-89 (OIG responsible for “drafting and issuing advisory opinions to the health care industry . . . on whether an activity . . . would constitute grounds for the imposition of a sanction under the anti-kickback statute” and “provides legal advice to [OIG, HHS, and the DOJ] concerning matters involving the interpretation of the anti-kickback statute and . . . the applicability of the anti-kickback statute to various practices”).

attached hereto as Exhibit A, and true and correct copies of all other process, pleadings and orders served upon each Defendant in the State Court Action are attached hereto as Exhibit B.

17. Pursuant to 28 U.S.C. § 1446(d), the Notice of Filing of Notice of Removal being filed with the State Court of Fulton County, Georgia is attached hereto as Exhibit C.

18. All properly joined Defendants have consented to removal.

19. The prerequisites for removal under 28 U.S.C. §§ 1441 and 1446 have been met. If any questions arise as to the propriety of the removal of this action, Defendants request the opportunity to brief the issues for the Court, and, if necessary, pursue related limited discovery. *See Brown v. Eli Lilly & Co.*, 654 F.3d 347 (2d Cir. 2011) (affirming district court decision to withhold a ruling on removal until parties had finished discovery and fully briefed issues).

20. Pursuant to 28 U.S.C. § 1441(a), venue lies in, and Defendants are properly removing this action to, the Atlanta Division of the Northern District of Georgia because the State Court of Fulton County, Georgia, where the case was initially filed, is located in this federal judicial district and division.

21. As required by 28 U.S.C. § 1446(d), promptly after filing this Notice of Removal, Defendants shall provide notice of the removal to all parties.

22. In filing this Joint Notice of Removal, Defendants reserve all defenses to Relators' claims, including all defenses regarding lack of personal jurisdiction over any named Defendant, and any other defenses pertaining to claims that Relators have named the wrong parties to this action.

[signatures on following page]

Dated: May 31, 2013

Respectfully submitted,

AGREED:

/s/ Stephen S. Cowen

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 7.1(D) of the Local Rules of the Northern District of Georgia, the undersigned hereby certifies that the foregoing was prepared in a font and point selection approved by this Court and authorized by Local Rule 5.1(B).

This 31st day of May, 2013.

/s/ Lillian Nash Caudle

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CERTIFICATE OF SERVICE

I certify that on this day, I caused the foregoing DEFENDANTS' JOINT NOTICE OF REMOVAL to be filed with the Clerk of Court using the CM/ECF system, and served by First-Class Mail and electronic mail addressed to the following:

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This 31st day of May, 2013.

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